

August 17, 1993

This is in response to your correspondence of July 12, 1993, requesting guidance for your contractors that are listed on an approved contractors list, but who are presently not performing covered functions that would subject their employees to the random drug testing requirements under 49 CFR Part 199.

Your correspondence requests information on how a contractor might perform random testing and document that the 50 percent rate has been accomplished, when random testing might not occur during a portion of the quarter or year. Many contractors have indicated that they may perform covered functions for pipeline operators at various times during a year and the contracts may vary in length from a few days to several months depending on the nature of the work.

The Office of Pipeline Safety issued an opinion letter on July 30, 1992, which provided guidance for contractors on how they might satisfy all the drug testing requirements when performing intermittent covered functions for various operators during the year. The letter provides guidance in how to comply with the 50 percent random testing provisions. A copy of the opinion letter is enclosed for your review.

Thank you for your inquiry. Please let me know if you need additional information about our drug testing requirements.

Sincerely,

Richard L. Rippert
Drug Compliance Coordinator
Office of Pipeline Safety
Compliance

Enclosure

Your questions and answers concerning drug testing of the welders are outlined below:

Question: Do the welders welding the joints together (not the tie-in welds) have to be drug tested?

Answer: Yes. The procedure you outlined is a replacement function which meets the requirements for drug testing under Part 199. Welding the joints together in the pipeline right-of-way is a covered function and would be classified as a maintenance function performed on the pipeline. Replacement procedures are covered functions subject to Part 192, 193, and 195.

Question: If the joints were welded in a shop, rather than along side the existing pipeline, do the welders in the shop have to be drug tested?

Answer: No. In order to be subject to drug testing under Part 199 the covered employee must perform the function (operation, maintenance, or emergency-response) on the pipeline or LNG facility and it must be subject to Part 192, 193, or 195 regulations. Welding the joints together at a shop would not be considered "on the pipeline" and thus, not subject the welders to drug testing.

§199.7 START & STOP DOT DRUG TESTING PROGRAM - 7/30/92

Questions - Whether the drug testing requirements may be started and stopped when performing covered functions for an operator which would subject the employees to the drug testing requirements of 49 CFR Part 199?

Answer - You have indicated that your company bids on projects for various pipeline operators which would make some of your employees subject to the drug testing requirements under Part 199 when they perform covered functions for the operator. You stated that some of these projects may vary in length from a few weeks to several months. You asked if it were permissible to start and stop your drug testing program each time you were awarded a contract to perform covered functions for an operator which would require your employees to be subject to the drug testing provisions of Part 199.

A contractor must start a Part 199 drug testing program for each job it does for an operator which involves performing covered functions subject to testing under Part 199. The contractor would stop the drug testing program after completion of the covered functions. A contractor must ensure that each time they are awarded a contract to perform covered functions for an operator that they are in full compliance with the requirements of Part 199 and Part 40 prior to performing those covered functions.

This would include pre-employment testing of those employees who would perform covered functions for the operator. They would also be subject to the other provisions of the drug testing regulations, including random testing during the length of the contract period with the operator.

Random testing could be conducted in the following manner to ensure compliance with the regulations. The 50 percent per year random testing requirement should be pro-rated for contracts of less than one year. A contractor with 100 employees subject to random testing would have to conduct 50 random test during a 12-month period. If the contractor was subject to Part 199 testing for only a 3-month period during that year, the contractor could conduct random testing during the contract period. During that 3-month period, the contractor would have to conduct 13 random tests in order to satisfy the random rate requirement. If the contract period were 6 months, then 25 random tests would have to be conducted.

§199.7 UNDERWATER INSPECTION OF PIPELINES - 10/28/92*

Question - Whether an operator, who remains at the ocean surface, in control of an underwater submarine that inspects submerged pipelines would be subject to drug testing under Part 199?

Answer - A person performing an operation, maintenance or emergency-response function on a pipeline regulated by 49 CFR Parts 190-199 is an "employee", as defined in 49 CFR §199.3 and is subject to drug testing.

The activity you describe is a maintenance function performed on a pipeline. The function is regulated under the underwater inspection provisions of 49 CFR §§192.612 and 195.413 to the extent that the pipeline being inspected meets the criteria set out in those regulations.

§199.7 RIGHT-OF-WAY AGENTS - 12/9/92*

Question - Your correspondence indicates that your right-of-way agents conduct courthouse research to ascertain who the land owners are and then negotiate with these owners to secure a right-of-way easement for the pipeline to cross their property and construct the pipeline. You also deal with land owners after construction to settle disputes and grievances with the owners concerning the constructed pipeline. Based on this job description you asked if your right-of-way agents are subject to the drug testing provisions of 49 CFR Parts 199 and 40?

Answer - Your employees would not be subject to the drug testing requirements under 49 CFR Part 199 and 40 since they do not perform an operation, maintenance, or emergency-response function on the